

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

-----:
JONATHAN R., minor, by Next :
Friend, Sarah Dixon, et al. :
:
Plaintiffs :
:
vs. : Class Action
: 3:19-cv-00710
JIM JUSTICE, in his official :
capacity as the Governor of :
West Virginia, et al. :
:
Defendants :
-----:

DEPOSITION OF ELIZABETH M. APARICIO, PH.D.

DATE: October 30, 2020
TIME: 8:58 a.m.
LOCATION: Rockville, Maryland
REPORTED BY: Shari R. Broussard, RPR, CSR
Reporter, Notary

<p style="text-align: right;">Page 30</p> <p>1 mental health and sexual health intervention with 2 youth experiencing homelessness and then if you 3 turn the page to page four, you state that 4 "Approximately 40 percent of the homeless youth in 5 my studies are former foster youth"; is that 6 right? 7 A Correct. 8 Q How many foster youth are you referring 9 to when you say 40 percent? 10 A Give me a moment. 11 Q Sure. 12 A So those studies are referring to -- let 13 me back up and just answer what you said. 14 Twenty-seven youths. 15 Q And is that 27 youths, that's the 16 40 percent of the homeless youth or is that the 17 total number in the studies? 18 A So the studies that you're referring to 19 are a series of studies from a development of a 20 sexual health program. This is what I was 21 starting to say earlier. We had 68 youths go 22 through the program and so the 27 youths I'm</p>	<p style="text-align: right;">Page 32</p> <p>1 Q Could you turn to page five of your 2 report, please. 3 A Yes, I'm there. 4 Q So the first sentence under the heading 5 "Summary of Opinion" it says, "Upon careful 6 review, it is my opinion that the West Virginia 7 Department of Health and Human Resources and the 8 Bureau for Children and Families have failed to 9 provide sufficient care for youth in foster care 10 aged 14 and older who are preparing to age out of 11 foster care." 12 Did I read that correctly? 13 A Yes, you did. 14 Q Before this project, had you ever 15 reviewed a child welfare program to determine if 16 it provides sufficient care for youth in foster 17 care aged 14 and older who are preparing to age 18 out of foster care? 19 A I have not formally done so. 20 Q Have you done so informally? 21 A I'm pausing because perhaps as part of 22 my regular work as a social worker I'd prefer if</p>
<p style="text-align: right;">Page 31</p> <p>1 referring to are part of that sample of 68 youths 2 who have received that program. 3 Q Okay. 4 A Does that answer your question? 5 Q Yeah, that's helpful. Thank you. 6 A Okay. 7 Q Where were those 27 youths in custody? 8 MS. POST: Objection. Basis of 9 knowledge, ambiguous. 10 Are you referring to a state? Are you 11 referring to a program, an agency? 12 BY MS. SMITH: 13 Q What state foster care program were 14 these homeless youth in foster care in? 15 A The question that we -- the question 16 that we asked -- the question that we asked them 17 was whether or not they had ever been in foster 18 care, so I do not have that information as to 19 which system they were involved with. 20 Q Do you know if any were in custody due 21 to a juvenile justice adjudication? 22 A I do not.</p>	<p style="text-align: right;">Page 33</p> <p>1 systems were more responsive generally. I think 2 we all want for our systems to work well. But no, 3 I have not informally or formally passed judgment 4 that an organization has failed to provide 5 sufficient care for youth in foster care aged 14 6 or older who are preparing to age out of the 7 foster care system. 8 Q And before this project, had you ever 9 reviewed any type of program that serves foster 10 youth aged 14 or older to determine if the program 11 provides sufficient care for youth in foster care 12 aged 14 and older? 13 MS. POST: Objection. Ambiguous, "type 14 of program." 15 THE WITNESS: Can you say more about 16 what you mean? 17 BY MS. SMITH: 18 Q So besides the child welfare program, 19 have you reviewed a type of program that serves 20 foster youth or that provides services to foster 21 youth regarding whether or not they provide 22 sufficient care for youth in foster care aged 14</p>

<p style="text-align: right;">Page 34</p> <p>1 and older?</p> <p>2 MS. POST: Objection. Ambiguous.</p> <p>3 Again, perhaps if counsel can clarify what you</p> <p>4 mean. Agency, community-based program, non-foster</p> <p>5 care related, foster care related. That's a wide</p> <p>6 variety and your question is very ambiguous.</p> <p>7 THE WITNESS: I'm nodding to say yes, I</p> <p>8 don't understand the question that you're asking</p> <p>9 me.</p> <p>10 BY MS. SMITH:</p> <p>11 Q Do you have any basis to compare West</p> <p>12 Virginia's child welfare program with another</p> <p>13 child welfare program?</p> <p>14 A I have not conducted another expert</p> <p>15 witness review of a child welfare system if that's</p> <p>16 your question, so I have not done this same</p> <p>17 process with another system if that's what you're</p> <p>18 asking me.</p> <p>19 Q Besides an expert witness review, have</p> <p>20 you otherwise reviewed another child welfare</p> <p>21 system?</p> <p>22 MS. POST: Objection. Ambiguous. With</p>	<p style="text-align: right;">Page 36</p> <p>1 cite, have you done any type of review or research</p> <p>2 on your own regarding a specific state child</p> <p>3 welfare program?</p> <p>4 MS. POST: I'm going to object and ask</p> <p>5 that counsel please be specific as to the question</p> <p>6 being asked. It was the Annie E. Casey program,</p> <p>7 not to be confused with Casey Family programs.</p> <p>8 And if you simply state in your question "Casey,"</p> <p>9 that can result in confusion, so I would just ask</p> <p>10 counsel to be specific. Now with that clarity --</p> <p>11 BY MS. SMITH:</p> <p>12 Q You can answer, Dr. Aparicio.</p> <p>13 A So are you asking me if I have done the</p> <p>14 same process with another organization before, the</p> <p>15 same thing that I've done here? The answer is no</p> <p>16 to that.</p> <p>17 If you would like to know if I have</p> <p>18 worked with child welfare community-based</p> <p>19 organizations or state level child welfare</p> <p>20 organizations, the answer is yes.</p> <p>21 As you'll see in my curriculum vita, I</p> <p>22 have worked to oversee a pipeline training program</p>
<p style="text-align: right;">Page 35</p> <p>1 respect to aging out, with respect to some other</p> <p>2 form of inquiry? Perhaps counsel can be more</p> <p>3 specific.</p> <p>4 THE WITNESS: Yes, can you be more</p> <p>5 specific, please?</p> <p>6 BY MS. SMITH:</p> <p>7 Q Sure. I mean, do you have any basis to</p> <p>8 compare West Virginia to another state's child</p> <p>9 welfare program?</p> <p>10 MS. POST: Objection.</p> <p>11 You can answer.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MS. SMITH:</p> <p>14 Q And what is that?</p> <p>15 A That is based on the evidence that's</p> <p>16 provided in my report as I've cited through the</p> <p>17 Annie E. Casey Foundation that compared the</p> <p>18 outcomes of youth who are transition age youth</p> <p>19 who've aged out of care actually in West Virginia</p> <p>20 compared to national outcomes, and those details</p> <p>21 are cited in my report.</p> <p>22 Q So besides the Casey report that you</p>	<p style="text-align: right;">Page 37</p> <p>1 for child welfare in Hawaii, for example, and that</p> <p>2 involved collaborating with the department there</p> <p>3 to see what kinds of skills they would like their</p> <p>4 social workers to have, so preparing them for</p> <p>5 being able to provide service to youth in care,</p> <p>6 including transition age youth in care.</p> <p>7 Does that answer your question?</p> <p>8 Q Yes, thank you.</p> <p>9 A Okay.</p> <p>10 Q On page, let's see, on page two of your</p> <p>11 report -- could you turn to that page, please?</p> <p>12 A Yes, I'm there.</p> <p>13 Q The second sentence says, "I was asked</p> <p>14 to provide my opinion concerning West Virginia's</p> <p>15 policies and practices for the provision of</p> <p>16 services to transition age foster youth."</p> <p>17 Before this project, had you ever been</p> <p>18 asked to provide an opinion concerning a state's</p> <p>19 policies and practices for the provision of</p> <p>20 services to transition age foster youth?</p> <p>21 A In what context?</p> <p>22 Q In any context.</p>

<p style="text-align: right;">Page 38</p> <p>1 A Not formally. I would say in the course 2 of my work as a social worker I was asked to 3 provide guidance on how to better serve youth in 4 foster care and specifically my own clients. I, 5 as a peer, was asked how to better -- you know, 6 just based on a peer-case review, how to better 7 serve other people/clients without revealing their 8 identifying details. 9 Let's see. I have not conducted a 10 policy manual review as detailed as what I've done 11 for you all in West Virginia previously, but I 12 gave that a very thorough review and noted many of 13 your policy and procedure manuals. I have read 14 many as a social worker and followed them myself 15 but not have had to comment on -- on them in 16 this -- in the level of detail that I've done for 17 you. 18 Q And was the advice that you mentioned 19 that you've given more informally, was any of that 20 advice to child welfare agencies? 21 A I'm thinking. Not to state level child 22 welfare agencies but certainly to community-based</p>	<p style="text-align: right;">Page 40</p> <p>1 A What I said was that as a social worker, 2 I had read my own organization's practice and 3 policy manuals. 4 Q Okay. So have you read any other child 5 welfare system -- agency or state agency or county 6 agency child welfare policies before? 7 A As a social worker, yes. 8 Q And which -- 9 A Not as an expert witness. 10 Q And which -- 11 A Which is helpful. 12 Q No, yeah, thank you. I appreciate that. 13 And which child welfare programs, state 14 or county, have you reviewed their policies? 15 A Montgomery County, Maryland. 16 Q Any others? 17 A No. 18 Q And what was the context of your review 19 of Montgomery County, Maryland's policies? 20 A Can you be more specific? 21 Q Why were you reviewing the policies of 22 Montgomery County, Maryland?</p>
<p style="text-align: right;">Page 39</p> <p>1 organizations that are providing care to 2 transition age foster youth as in foster youth are 3 placed with those organizations. I have provided 4 support to those organizations in how to deliver, 5 for example, trauma informed care to that 6 population that they're serving. 7 Q And you mentioned that you've reviewed 8 other states' -- correct me if I'm wrong. I think 9 you mentioned you've reviewed other states' child 10 welfare policies and practice manuals before; is 11 that right? 12 MS. POST: Objection. Misstates the 13 testimony. 14 THE WITNESS: Can you be more specific 15 about what you mean? 16 BY MS. SMITH: 17 Q Yeah. I think you have said -- please 18 correct me, but I thought you had said you have 19 reviewed other states' child welfare policies and 20 practice manuals, but you had never reviewed them 21 to the level of detail that you have with West 22 Virginia. Am I wrong about that?</p>	<p style="text-align: right;">Page 41</p> <p>1 What was the purpose of your review? 2 A The purpose of my review was I had 3 started as an intern there initially and was 4 reading policy and procedure manuals to be able to 5 get up to speed on expectations of me as a social 6 work intern both as an undergraduate student and 7 as a graduate student. I had two internships with 8 Montgomery County Child Welfare. 9 Q And do you have an opinion as to whether 10 Montgomery County, Maryland's child welfare 11 policies are done well with respect to transition 12 age youth? 13 A I do not have an -- 14 MS. POST: Objection. Outside of the 15 scope. 16 THE WITNESS: I do not have an opinion 17 on that. 18 BY MS. SMITH: 19 Q Of the child welfare systems that you're 20 familiar with, are there any that you think have 21 done well with respect to the provision of 22 services to transition age foster youth?</p>

<p style="text-align: right;">Page 54</p> <p>1 Q And do you have an opinion about DHHR's</p> <p>2 (inaudible) policies that you reviewed?</p> <p>3 A Can you repeat that? We had a little</p> <p>4 interference.</p> <p>5 Q Yeah, sorry about that. I heard that</p> <p>6 too.</p> <p>7 Do you have an opinion -- I'm sorry, it</p> <p>8 might be me. Do you have an opinion regarding</p> <p>9 DHHR's child welfare policies that you reviewed?</p> <p>10 A My opinion is that the policies and the</p> <p>11 listing of services that are provided are</p> <p>12 extensive. The long list looks very good, as I</p> <p>13 stated in my report, but the evidence for those --</p> <p>14 the effectiveness of those policies and procedures</p> <p>15 and services is unknown based on the data that</p> <p>16 you're making available to the -- the plaintiff as</p> <p>17 well as the data that is available nationally</p> <p>18 other than to say that the outcomes of the youth</p> <p>19 who are leaving care in West Virginia are much</p> <p>20 poorer compared to what we would expect based on</p> <p>21 national averages.</p> <p>22 Q So you don't have any concern with the</p>	<p style="text-align: right;">Page 56</p> <p>1 distinction between policy and implementation is a</p> <p>2 bit muddy here, but one thing that concerned me</p> <p>3 was the overuse of congregate care among West</p> <p>4 Virginia foster youth and also the recruitment of</p> <p>5 foster homes that were specific for -- for youth</p> <p>6 who are in the sensitive developmental period,</p> <p>7 which was confirmed by Ms. Harper in her</p> <p>8 deposition. So those may not be policies, but</p> <p>9 they are practices certainly.</p> <p>10 Q So did you see any policies, for</p> <p>11 example, regarding congregate care that gave you</p> <p>12 concern?</p> <p>13 A I would say they were not policies that</p> <p>14 put a ceiling on expectations of how many youth,</p> <p>15 for example, are going --</p> <p>16 THE REPORTER: I'm sorry. I'm sorry,</p> <p>17 something is cutting out. Could you start that</p> <p>18 again? I don't know what's going on here.</p> <p>19 (The reporter read the record</p> <p>20 as requested.)</p> <p>21 THE REPORTER: Just hold on. Dawn, are</p> <p>22 you on? Dawn? I think that's what the problem</p>
<p style="text-align: right;">Page 55</p> <p>1 policies themselves, it's the implementation of</p> <p>2 the policies; is that right?</p> <p>3 A That's a broad statement to say that</p> <p>4 there's no concern with any policy anywhere, so I</p> <p>5 would hesitate to say that. I haven't reviewed</p> <p>6 every single policy that you have, so there may be</p> <p>7 some room for improvement. But I would say in</p> <p>8 general the -- the structure is there, but it</p> <p>9 seems, again, as you know, the implementation</p> <p>10 and -- and, you know, all kinds of challenges</p> <p>11 related to that seem to be where the majority of</p> <p>12 the issues lie. But I would hesitate to say that</p> <p>13 there are no issues of any policy within West</p> <p>14 Virginia for transition age youth.</p> <p>15 Q Did you identify any concerns that you</p> <p>16 had with any of DHHR's child welfare policies?</p> <p>17 A Give me a moment.</p> <p>18 Q Sure.</p> <p>19 A Can you restate your question, please?</p> <p>20 Q Were there any DHHR foster care policies</p> <p>21 that you reviewed that you were concerned with?</p> <p>22 A I'm pausing because I think the</p>	<p style="text-align: right;">Page 57</p> <p>1 is, I think she's frozen. Yeah, she's frozen.</p> <p>2 THE WITNESS: It's been an hour. Should</p> <p>3 we take a break?</p> <p>4 THE REPORTER: Yeah, that's a good idea.</p> <p>5 MS. SMITH: Sure.</p> <p>6 (Brief recess 10:15 a.m. to 10:17 a.m.)</p> <p>7 (The reporter read the record</p> <p>8 as requested.)</p> <p>9 THE WITNESS: Would you like me to pick</p> <p>10 that up?</p> <p>11 BY MS. SMITH:</p> <p>12 Q Yes, I would. Thank you.</p> <p>13 A Okay. So what I was saying was that</p> <p>14 it's more the lack of written policy about</p> <p>15 expectations regarding congregate care or</p> <p>16 regarding recruitment of foster homes that I found</p> <p>17 concerning. So less of what's there and much more</p> <p>18 of what's not there that gave me pause for</p> <p>19 concern.</p> <p>20 Q And did you review the policy regarding</p> <p>21 the least restrictive settings?</p> <p>22 A I did, yes, and I found that that -- I</p>

<p style="text-align: right;">Page 58</p> <p>1 felt that that policy was not being followed in 2 practice and so thank you for pointing that out to 3 me. That is a policy that I see is there but 4 seems not to be being followed. 5 In Ms. Harper's deposition she was not 6 able to distinguish between, in congregate care, 7 for example, how many of their youth and what 8 proportion of the youths who are in congregate 9 care were justice involved and court ordered to 10 actually be in that placement versus how many 11 youths were in foster care and there because that 12 was determined to be the least restrictive and 13 most appropriate environment for them per what you 14 all use in your team decision-making model versus 15 how many youths in foster care who were there 16 simply because there was an unavailability of an 17 appropriate foster home, which would have been 18 the -- the most appropriate least restrictive 19 environment. So that's what I mean when I say 20 that there are issues with implementation that I 21 see. 22 Q And have those distinctions that</p>	<p style="text-align: right;">Page 60</p> <p>1 knowledge, outside the scope. 2 THE WITNESS: I was not privy to those 3 conversations, no. 4 BY MS. SMITH: 5 Q Did you ask the plaintiffs for that 6 information? 7 MS. POST: Objection. Calls for a legal 8 conclusion as well. 9 THE WITNESS: Did I ask the plaintiffs 10 for the information in terms of those 11 distinctions? 12 BY MS. SMITH: 13 Q Yes. 14 A No, I did not. 15 Q And why not? 16 MS. POST: Objection. 17 THE WITNESS: So why didn't I ask for 18 that specific statistic? It doesn't seem like 19 they had that information, so if you give me a 20 moment and I'll quote Ms. Harper. 21 Thank you for your patience. I don't 22 want to misquote her.</p>
<p style="text-align: right;">Page 59</p> <p>1 Ms. Harper was not able to identify, would those 2 have been helpful for you in your review? 3 A Yes, they would have been helpful and I 4 think they would be helpful to the organization 5 too, to be thinking through what are the issues 6 and how can we address them. So that was -- I'm 7 sure we'll talk more about additional concerns, 8 but that was a concern as well, the review 9 process -- the continuous quality review process. 10 Q And is it your understanding that the 11 department does not have the information regarding 12 those distinctions? 13 A I don't know whether or not the 14 department has that information. I would hope 15 that they would have it. They should have. But 16 it wasn't provided in the deposition and it wasn't 17 provided in any of the documents the -- the 18 defendants provided to the plaintiffs, so I'm not 19 able to comment fully on that. 20 Q Do you know what topics Ms. Harper was 21 asked to testify on in her deposition? 22 MS. POST: Objection. Basis of</p>	<p style="text-align: right;">Page 61</p> <p>1 BY MS. SMITH: 2 Q No problem. 3 A I'm looking for the point where she was 4 talking about the sense of overwhelm within the -- 5 the system. 6 Q So I know what you're talking about. I 7 don't think I need you to find it right now. But 8 did you review the defendants' motion to clarify 9 the class definition which has this information in 10 it? 11 MS. POST: Objection. Calls for a legal 12 conclusion, outside of the scope and I believe 13 that was also filed after class certification. 14 And for point of clarification, the 15 quote that you were looking for is page 17, the 16 top of page 18. 17 BY MS. SMITH: 18 Q Dr. Aparicio, is it your opinion that 19 the number of juvenile justice youths is relevant 20 to assessing DHHR's use of congregate care? 21 MS. POST: Objection. 22 THE WITNESS: Yes, it's relevant in the</p>

<p style="text-align: right;">Page 62</p> <p>1 sense that we would want to know how many of your 2 youth are being put in congregate care because 3 they're court ordered to be there, as I stated 4 earlier.</p> <p>5 And I'd like to circle back to what we 6 were talking about earlier with Ms. Harper's 7 report. In my -- my report page 18, it states at 8 the top, "Ms. Harper affirmed the sense of 9 overwhelm within the system multiple times, 10 stating, 'There's many reports I could have run. 11 But at this point we have not enough staff to 12 manage the data we're working with now, so I don't 13 know who would do that.'"</p> <p>14 BY MS. SMITH:</p> <p>15 Q And what question of mine was that in 16 response to?</p> <p>17 A You were asking me earlier about being 18 able to -- to pull those numbers and have 19 available data to inform -- what I would do is to 20 use that to inform practice within the child 21 welfare system and policy reform as it was 22 necessary and managed within the system. And I'm</p>	<p style="text-align: right;">Page 64</p> <p>1 system is overwhelmed with the children that they 2 are serving, they're overwhelmed with all 3 different kinds of things, so it's just been a 4 challenge. And so that's what I'm referring to.</p> <p>5 So she may not have been -- that 6 particular quote may not be attached to number of 7 youths in congregate care per se. I think 8 actually she was talking about how many youths are 9 successfully transitioned into receiving the adult 10 system with Medicaid, which is another important 11 thing we would want for our youth as they're 12 transitioning out of -- of care. And I know, I'm 13 sure, that -- that anybody in the system would say 14 they would want that to happen. She may have been 15 talking about that, but I'm referring to more just 16 an overall sense of overwhelm and not being able 17 to have the staff to be able to prepare those 18 kinds of numbers and -- yeah, that's what I'm 19 referring to.</p> <p>20 Q So her overwhelm is in regards to the 21 data in reports; is that right? Is that what your 22 understanding is?</p>
<p style="text-align: right;">Page 63</p> <p>1 pointing that out because it seems like there is 2 that sense of overwhelm of -- of just trying to 3 manage the children who are already in care 4 without being able to reform -- or even evaluate 5 and then reform those services or policies or 6 programs that are not serving your youth the way 7 that -- that West Virginia's hoping that they 8 would.</p> <p>9 Q And in that language that you quoted 10 from Ms. Harper's testimony, is she referencing 11 the distinction between the juvenile justice 12 population and the foster care population and 13 congregate care when she made that statement?</p> <p>14 A I'd have to go back to her deposition to 15 confirm exactly what she was responding to at that 16 moment.</p> <p>17 Q But is that what you think she was 18 referencing or are you quoting that testimony of 19 hers more generally?</p> <p>20 A I'm quoting it as an example of one of 21 the many times that she indicated throughout her 22 testimony that the West Virginia child welfare</p>	<p style="text-align: right;">Page 65</p> <p>1 A I would not say that it's limited to the 2 data in reports, I would say that it also related 3 to the -- the day-to-day operations of the child 4 welfare system in West Virginia.</p> <p>5 Q Well, in the quote that you cited is she 6 referring to data in reports?</p> <p>7 A That's true, she's reporting -- she's 8 referring to data in reports there, yeah.</p> <p>9 I think I have other quotes from her 10 where she talks about other points of overwhelm.</p> <p>11 Q In your role as an expert witness in 12 this case, were you asked to identify areas that 13 DHHR has done well with respect to foster youth 14 aged 14 and older?</p> <p>15 A I was asked to provide an overall 16 opinion and so, yes, of course I looked at those 17 areas as well and commented on those in my report.</p> <p>18 I'm a social worker and so it's -- I am 19 by nature trained to look at both strengths and 20 challenges and so I thought myself at many points 21 wanting to highlight the things that you all are 22 trying to do and have attempted to do. Those --</p>

<p style="text-align: right;">Page 78</p> <p>1 MS. SMITH: Sure.</p> <p>2 (Brief recess 10:43 a.m. to 10:47 a.m)</p> <p>3 (The reporter read the record</p> <p>4 as requested.)</p> <p>5 BY MS. SMITH:</p> <p>6 Q So the first full paragraph on there, it</p> <p>7 says, "However, none of the seven child outcomes</p> <p>8 across domains of safety, permanency, and</p> <p>9 well-being were found to be in substantial</p> <p>10 conformity in West Virginia."</p> <p>11 Did I read that correctly?</p> <p>12 A Yes.</p> <p>13 Q And what is your understanding of what</p> <p>14 it means when a CFSR review says that a state is</p> <p>15 not in substantial conformity with an outcome?</p> <p>16 A So that's based on the data that I</p> <p>17 collected for that particular outcome, which again</p> <p>18 includes multiple indicators, and the expectation</p> <p>19 is that they have achieved that 95 percent --</p> <p>20 it's, you know, it's a little bit different on</p> <p>21 what exactly that means for each of the different</p> <p>22 outcomes, but that 95 percent of the cases</p>	<p style="text-align: right;">Page 80</p> <p>1 reports when it explains their methods.</p> <p>2 Q Okay. So on page nine we have Safety</p> <p>3 Outcome One, "Children are first and foremost</p> <p>4 protected from abuse and neglect."</p> <p>5 Do you know how many states were found</p> <p>6 to be in substantial conformity with Safety</p> <p>7 Outcome One in the 2017 CFSR?</p> <p>8 A I don't.</p> <p>9 Q Would it surprise you that only four</p> <p>10 states were found to be in substantial conformity?</p> <p>11 A It would not because 95 percent is a</p> <p>12 high percentage, but how does West Virginia</p> <p>13 compare to other states in terms of percentage of</p> <p>14 substantial conformity?</p> <p>15 Q And then the same page number two</p> <p>16 states, "Safety Outcome Two: Children are safely</p> <p>17 maintained in their homes whenever possible and</p> <p>18 appropriate."</p> <p>19 Do you know how many states were found</p> <p>20 to be in substantial conformity with Safety</p> <p>21 Outcome Two?</p> <p>22 A I do not.</p>
<p style="text-align: right;">Page 79</p> <p>1 reviewed, for example, indicates that children</p> <p>2 are, for Safety Outcome One, children are first</p> <p>3 and foremost protected from abuse and neglect.</p> <p>4 Q And do you know how those outcomes are</p> <p>5 measured?</p> <p>6 A So they have -- each of them has</p> <p>7 multiple indicators. I would have to pull up the</p> <p>8 CFSR to tell you the specific indicators for each</p> <p>9 of the outcomes, but there are -- each of the</p> <p>10 outcomes is a composite measure of several</p> <p>11 different indicators that are based on a review</p> <p>12 of -- of the system.</p> <p>13 Q And I believe you said that the</p> <p>14 expectation was a 95 percent substantial</p> <p>15 conformity.</p> <p>16 What do you mean by "expectation"?</p> <p>17 A That's the standard threshold that the</p> <p>18 CFSR reports that they want for child welfare</p> <p>19 systems to achieve.</p> <p>20 Q And what's your basis for saying that</p> <p>21 it's an expectation?</p> <p>22 A That's what it states in the CFSR</p>	<p style="text-align: right;">Page 81</p> <p>1 Q Would it surprise you that no state was</p> <p>2 found to be in substantial conformity?</p> <p>3 A Again, perhaps no, because 95 percent is</p> <p>4 a really high bar that we're working to achieve.</p> <p>5 What I did in my report was to look at</p> <p>6 your percentage of substantial conformity and look</p> <p>7 at trends over time. So it's less that did you</p> <p>8 meet the mark or not and more how are you doing</p> <p>9 relative -- relatively doing on this particular</p> <p>10 outcome.</p> <p>11 Q So on this particular outcome how did</p> <p>12 West Virginia compare with other states?</p> <p>13 A I did not review other states' CFSRs, so</p> <p>14 I can't answer that question for you.</p> <p>15 Q And then number three is "Permanency</p> <p>16 Outcome One: Children have permanency and</p> <p>17 stability in their living situations."</p> <p>18 Do you know how many states were found</p> <p>19 to be in substantial conformity with Permanency</p> <p>20 Outcome One?</p> <p>21 A No.</p> <p>22 Q So you don't know if West Virginia was</p>

<p style="text-align: right;">Page 82</p> <p>1 better or worse than other states on this outcome?</p> <p>2 A No. I looked at multiple CFSRs for West</p> <p>3 Virginia and it was more based on the report of</p> <p>4 trends over time within your own state that I</p> <p>5 looked at as well as the, again, the -- the</p> <p>6 strengths and weaknesses that were presented in</p> <p>7 that report in terms of what West Virginia was</p> <p>8 trying to do and what they had not -- not yet</p> <p>9 attained that they were working towards.</p> <p>10 Q And you looked at the 2008 CFSR and the</p> <p>11 2017 CFSR; is that right?</p> <p>12 A Yes.</p> <p>13 Q And do you know what years were reviewed</p> <p>14 for those two CFSRs?</p> <p>15 A I believe it's the prior 12 months and</p> <p>16 I'm not sure what the cutoff point is, so it's not</p> <p>17 an exact, you know...</p> <p>18 Q So it would be like 2016 for the 2017</p> <p>19 CFSR and then 2007 for the 2008 CFSR; is that your</p> <p>20 understanding?</p> <p>21 A I would hate to say exactly what the --</p> <p>22 the time was and which month was drawn and all of</p>	<p style="text-align: right;">Page 84</p> <p>1 ten, we have Well-Being Outcome One. "Families</p> <p>2 have enhanced capacity to provide for their</p> <p>3 children's needs."</p> <p>4 Do you know how many states were found</p> <p>5 to be in substantial conformity with Well-Being</p> <p>6 Outcome One?</p> <p>7 A No.</p> <p>8 Q Would it surprise you that only six</p> <p>9 states were found to be in substantial conformity?</p> <p>10 A No.</p> <p>11 Q And is that for the same reason as the</p> <p>12 other outcomes?</p> <p>13 A That's correct.</p> <p>14 Q Well-Being Outcome Two is next. It</p> <p>15 says, "Children receive appropriate services to</p> <p>16 meet their educational needs."</p> <p>17 Do you know how many states were found</p> <p>18 to be in substantial conformity with Well-Being</p> <p>19 Outcome Two?</p> <p>20 A No.</p> <p>21 Q Would it surprise you that no state was</p> <p>22 found to be in substantial conformity?</p>
<p style="text-align: right;">Page 83</p> <p>1 that, so -- but yes, it's -- it's slightly before</p> <p>2 because they need to collect the information and</p> <p>3 then present it in order for the report to be</p> <p>4 written.</p> <p>5 Q And then Permanency Outcome Two, which</p> <p>6 is -- we're still on page nine --</p> <p>7 A Uh-huh.</p> <p>8 Q -- "The continuity of family</p> <p>9 relationships and connections in preserved for</p> <p>10 children."</p> <p>11 "In preserved for children," it seems a</p> <p>12 bit of an odd phrasing, but do you know how many</p> <p>13 states were found to be in substantial conformity</p> <p>14 with Permanency Outcome Two?</p> <p>15 A No.</p> <p>16 Q Would it surprise you that no state was</p> <p>17 found to be in substantial conformity?</p> <p>18 A No.</p> <p>19 Q Is that for the same reasons as the</p> <p>20 other outcomes that we've discussed?</p> <p>21 A Correct.</p> <p>22 Q And then if we turn the page to page</p>	<p style="text-align: right;">Page 85</p> <p>1 A No.</p> <p>2 Q Is that for the same reasons that we've</p> <p>3 discussed for the other outcomes?</p> <p>4 A Yes.</p> <p>5 Q And then the last, Well-Being Outcome</p> <p>6 Three, says, "Children receive adequate services</p> <p>7 to meet their physical and mental health needs."</p> <p>8 Do you know how many states were found</p> <p>9 to be in substantial conformity with Well-Being</p> <p>10 Outcome Three?</p> <p>11 A No.</p> <p>12 Q Would it surprise you that no state was</p> <p>13 found to be in substantial conformity?</p> <p>14 A No.</p> <p>15 Q And is that for the same reason as the</p> <p>16 other outcomes?</p> <p>17 A That's correct.</p> <p>18 Q And then on the same page, page ten, you</p> <p>19 talk about the CFSR systemic factors?</p> <p>20 A Uh-huh.</p> <p>21 Q And the last sentence in that middle</p> <p>22 paragraph, it says, "The areas in which West</p>

<p style="text-align: right;">Page 86</p> <p>1 Virginia failed to meet substantial conformity</p> <p>2 included," and then it lists those. So the first</p> <p>3 one is Statewide Information System.</p> <p>4 Do you know how many states were found</p> <p>5 to be in substantial conformity with that systemic</p> <p>6 factor, the Statewide Information System?</p> <p>7 A No.</p> <p>8 Q Do you know the age of West Virginia's</p> <p>9 current Statewide Information System?</p> <p>10 A The age of the Statewide Information</p> <p>11 System?</p> <p>12 Q Yeah.</p> <p>13 A Is that what you're asking?</p> <p>14 Q Yes.</p> <p>15 A I read in your documents that you're</p> <p>16 implementing a new system and I could not recall</p> <p>17 the exact start date of that new system. My</p> <p>18 recollection is it's within the last five years.</p> <p>19 Q For the new system; is that what you're</p> <p>20 saying?</p> <p>21 A For the new system, um-hm, but I'm not</p> <p>22 sure of the exact date.</p>	<p style="text-align: right;">Page 88</p> <p>1 to collect both the items that we need to be</p> <p>2 looking at as child welfare systems as well as be</p> <p>3 able to process that amount of information, not to</p> <p>4 mention have people who are able to analyze that</p> <p>5 data and produce recommendations. So that does</p> <p>6 not surprise me.</p> <p>7 Q And then for the Service Array and</p> <p>8 Resource Development systemic factor, do you know</p> <p>9 how many states were found to be in substantial</p> <p>10 conformity?</p> <p>11 A No.</p> <p>12 Q Would it surprise you that only three</p> <p>13 states were found to be in substantial conformity?</p> <p>14 A No.</p> <p>15 Q Okay. And why is that?</p> <p>16 A So I think -- that alarm was for the end</p> <p>17 of our break but we're already back.</p> <p>18 This is a challenging area, having a</p> <p>19 service array that is not only a good looking</p> <p>20 list -- as I mentioned in my report, West Virginia</p> <p>21 has that -- but it is also one that is really</p> <p>22 attuned to the needs of the population and is</p>
<p style="text-align: right;">Page 87</p> <p>1 MS. POST: Counsel, could we take a</p> <p>2 ten-minute break at this point?</p> <p>3 MS. SMITH: Sure. Should we come back</p> <p>4 at 11:05? Is that okay? I guess it's now 10:57.</p> <p>5 We can do 11:07.</p> <p>6 MS. POST: Okay. Thank you.</p> <p>7 MS. SMITH: Okay. Yeah.</p> <p>8 (Brief recess 10:57 a.m. to 11:05 a.m.)</p> <p>9 BY MS. SMITH:</p> <p>10 Q Okay. So we are on page ten of your</p> <p>11 report and we're looking at the systemic factors</p> <p>12 from the 2017 CFSR.</p> <p>13 Do you know how many states were found</p> <p>14 to be in substantial conformity with the Case</p> <p>15 Review System?</p> <p>16 A No.</p> <p>17 Q Would it surprise you that only two</p> <p>18 states were found to be in substantial conformity?</p> <p>19 A No. I think that's -- well, I think</p> <p>20 that's information technology -- like information</p> <p>21 technology is a challenge, this is a lot of data</p> <p>22 to manage and often our systems need to be updated</p>	<p style="text-align: right;">Page 89</p> <p>1 actually producing outcomes that we want to see</p> <p>2 among those populations and so it does not</p> <p>3 surprise me to hear that. This is a challenging</p> <p>4 area to be -- to be sure.</p> <p>5 Q The next systemic factor is the Foster</p> <p>6 and Adoptive Parent Licensing, Recruitment, and</p> <p>7 Retention.</p> <p>8 Do you know how many states were found</p> <p>9 to be in substantial conformity with that systemic</p> <p>10 factor?</p> <p>11 A No.</p> <p>12 Q Do you know what efforts DHHR has made</p> <p>13 since this report was published to improve Foster</p> <p>14 and Adoptive Parent Licensing, Recruitment, and</p> <p>15 Retention?</p> <p>16 A I know that that has been a focus and</p> <p>17 interest of the department. In Ms. Harper's</p> <p>18 deposition she was asked about some of those</p> <p>19 specifics and it was difficult to -- to say how</p> <p>20 many, for example, foster homes had been recruited</p> <p>21 that were specific to transition age foster youth.</p> <p>22 So I'm aware that there are -- there's mention in</p>

<p style="text-align: right;">Page 90</p> <p>1 the reports rather that there is efforts to change 2 this, but I am not able to comment on the specific 3 efforts and how rigorous they've been or anything 4 like that.</p> <p>5 Q And would it surprise you that only 14 6 states were found to be in substantial conformity 7 with the Foster and Adoptive Parent Licensing, 8 Recruitment, and Retention systemic factor?</p> <p>9 A No.</p> <p>10 Q And why is that?</p> <p>11 A So foster care recruitment is a 12 challenging area we know across the nation and so 13 it doesn't surprise me. But I would point us, 14 again, to your rate of congregate care use among 15 youth in -- in West Virginia compared to other 16 child welfare systems though and that even with 17 the national challenges with recruitment of foster 18 parents that West Virginia appears to be 19 particularly struggling with this for transition 20 age foster youth.</p> <p>21 Q So did you compare West Virginia's 22 percentage in response to the Foster and Adoptive</p>	<p style="text-align: right;">Page 92</p> <p>1 testimony.</p> <p>2 THE WITNESS: So to be clear, this is 3 not my expectation, this is a federal expectation 4 that 95 percent substantial conformity be met, and 5 so my opinion of that is perhaps irrelevant, but 6 it's a high bar. However, what I'm looking at is 7 trends over time within West Virginia and the 8 struggles over time that West Virginia has had on 9 both child outcomes and on systemic factors. So 10 it's less about whether or not West Virginia has 11 hit that 95 percent mark and more about the 12 percent -- percent substantial conformity rate 13 that you've had across now many, many, many years.</p> <p>14 BY MS. SMITH:</p> <p>15 Q Do you know if the CFSR compares 16 children who are currently in care with children 17 who are in their homes?</p> <p>18 A My understanding is that it's -- if I 19 recall correctly, so my understanding is that the 20 CFSR is child welfare related -- or child welfare 21 involved youth, so not just youth who are placed 22 in foster care at the time of the review.</p>
<p style="text-align: right;">Page 91</p> <p>1 Parent Licensing Recruitment and Retention 2 systemic factor, did you compare that with other 3 states to see how they did?</p> <p>4 A I didn't compare that specifically, no.</p> <p>5 Q Did you --</p> <p>6 A I was basing --</p> <p>7 Q Go ahead.</p> <p>8 A I was basing my -- my conclusions based 9 on the reports that were provided specific to West 10 Virginia. So no, I didn't compare it -- I didn't 11 compare that particular piece to the national 12 average or to other states.</p> <p>13 Q So your opinion is that the 95 percent 14 expectation of the CFSR is very high, but you're 15 not surprised that potentially very few states 16 were in substantial conformity with these outcomes 17 and systemic factors. But you said you were 18 looking at West Virginia's percentages to make 19 your conclusion, but you didn't compare West 20 Virginia's percentages to another state; is that 21 right?</p> <p>22 MS. POST: Objection. Misstates the</p>	<p style="text-align: right;">Page 93</p> <p>1 Children come in and out of foster care 2 placement at times and are placed in different 3 types of -- of placements and so I believe that 4 it's child welfare involved youth.</p> <p>5 Q Do you know the percentage of youth 6 reviewed that are in care versus the percentage of 7 youth reviewed that are not in care?</p> <p>8 A I do not.</p> <p>9 Q So on page ten, the second sentence in 10 that paragraph says, "This is worse than in the 11 prior evaluation, which included failure to meet 12 substantial conformity in three of the seven 13 systemic factors (report year 2008)."</p> <p>14 Did I read that correctly?</p> <p>15 A Correct.</p> <p>16 Q Why do you feel it's appropriate to 17 compare outcomes and systemic factors between the 18 2008 CFSR and the 2017 CFSR?</p> <p>19 A That's a typical way of looking at the 20 typical methodology and typical way of looking at 21 trends over time to compare changes over time 22 within a particular outcome.</p>

<p style="text-align: right;">Page 98</p> <p>1 yes. So if I recall correctly, there are</p> <p>2 narratives that are included as part of that</p> <p>3 review. I didn't -- again, as you questioned me</p> <p>4 earlier did I interview people myself. I didn't</p> <p>5 do that, but I did look at the state-level reviews</p> <p>6 and the efforts to continue to improve in between</p> <p>7 CFSRs.</p> <p>8 Q So on page 22 of your report, which I</p> <p>9 believe is the last page, if you could turn to</p> <p>10 that, please.</p> <p>11 A Yes, I'm here.</p> <p>12 Q Okay. The last sentence says, "Based on</p> <p>13 current policies, practices and outcomes, West</p> <p>14 Virginia DHHR operates a system that fails to meet</p> <p>15 its stated goals for children, with its pattern of</p> <p>16 failing to address safety, permanency, and</p> <p>17 well-being of transition age youth."</p> <p>18 When you say "pattern," what's your</p> <p>19 basis for that?</p> <p>20 A So that includes not only the CFSRs but</p> <p>21 also the state-level reviews that occur in between</p> <p>22 the CFSRs, those reports. It includes -- this is</p>	<p style="text-align: right;">Page 100</p> <p>1 also patterns that are across multiple data points</p> <p>2 and types of data that are collected, so I mean it</p> <p>3 in that sense, is that with all of the different</p> <p>4 data sources that I looked at all signs pointed to</p> <p>5 transition age youth in foster care in West</p> <p>6 Virginia not experiencing outcomes that we would</p> <p>7 expect relative to other foster youth across the</p> <p>8 nation and that they are, for example, being</p> <p>9 placed in congregate care at very high rates.</p> <p>10 Those -- that's what I mean by patterns,</p> <p>11 is that it's not just comparing CFSRs across years</p> <p>12 but it's looking at CFSRs, it's looking at the</p> <p>13 state-level reviews, and looking at the other --</p> <p>14 the other pieces of evidence that I considered.</p> <p>15 THE REPORTER: All right. We're going</p> <p>16 to have to hold on a second because Dawn got</p> <p>17 knocked off again. She's not on.</p> <p>18 MS. SMITH: Yeah. Okay.</p> <p>19 (Brief recess 11:21 a.m. to 11:28 a.m.)</p> <p>20 (Whereupon, Ms. Post left the</p> <p>21 proceedings.)</p> <p>22 BY MS. SMITH:</p>
<p style="text-align: right;">Page 99</p> <p>1 an overall statement, so it includes really</p> <p>2 everything that I reviewed. It includes those</p> <p>3 outcomes that we were talking about earlier of the</p> <p>4 youth who are -- who are aged out of the system in</p> <p>5 West Virginia compared to --</p> <p>6 Q Are those the Annie E. --</p> <p>7 A Sorry.</p> <p>8 Q Are those the Annie E. Casey outcomes?</p> <p>9 A That's correct. That's correct.</p> <p>10 Q And --</p> <p>11 A It also includes the Safe Home Reports,</p> <p>12 Evaluation Reports, and any other -- any other</p> <p>13 reports that are in the -- the appendix there.</p> <p>14 That really is an ominous statement of a review of</p> <p>15 the evidence, so it is not only related to the</p> <p>16 CFSRs.</p> <p>17 Q I guess when you say "pattern," I guess</p> <p>18 I think of pattern as something that occurs</p> <p>19 multiple times over the years. So besides the</p> <p>20 CFSRs, what measures are repeated in the reports</p> <p>21 that you reviewed?</p> <p>22 A So patterns are over time, but they're</p>	<p style="text-align: right;">Page 101</p> <p>1 Q So we were talking about your last</p> <p>2 sentence on page 22 about DHHR's patterns.</p> <p>3 What did you look at that was specific</p> <p>4 to transition age youth other than the Annie E.</p> <p>5 Casey Report?</p> <p>6 A Everything that I reviewed is in the</p> <p>7 appendix that starts on page 23. So I could read</p> <p>8 all of that out, but I read everything that's</p> <p>9 related to transition age youth in all of your</p> <p>10 manuals, in all of your PIPs, in all of your</p> <p>11 state-level reports, and the Safe at Home Reports.</p> <p>12 So that's what I mean when I say that</p> <p>13 there's a pattern, is that it's across different</p> <p>14 reports, across years, across data points, across</p> <p>15 people reporting it. To reiterate, not just</p> <p>16 between the two CFSRs but across multiple data</p> <p>17 points and multiple points of time.</p> <p>18 Q Are there any reports that you looked at</p> <p>19 besides the Annie E. Casey one that has specific</p> <p>20 data information related to transition age youth?</p> <p>21 MS. MAHONEY: Objection. Asked and</p> <p>22 answered.</p>

<p style="text-align: right;">Page 146</p> <p>1 attend West Virginia University?</p> <p>2 A I don't.</p> <p>3 Q I think you said a very small number.</p> <p>4 A Yeah, I don't have that number.</p> <p>5 Q Okay. Do you know how many foster care</p> <p>6 youth are in college from West Virginia?</p> <p>7 A I don't have that specific statistic,</p> <p>8 no, but it is -- nationally we know that it's a</p> <p>9 pretty low percentage and that's why I'm saying</p> <p>10 that youth would need additional things in</p> <p>11 addition to something like a House Program that's</p> <p>12 going to serve such a tiny margin of your youth</p> <p>13 who are transitioning from the foster care system.</p> <p>14 You really need something that's going to help</p> <p>15 those who are going to community college or those</p> <p>16 who are going to technical schools. Those are the</p> <p>17 kinds of -- at the point where they're preparing</p> <p>18 to transition to adulthood, those are the kinds</p> <p>19 of, let's say, array of educational supports that</p> <p>20 would be important.</p> <p>21 So all of this is to say -- we got into</p> <p>22 this conversation because you're talking about</p>	<p style="text-align: right;">Page 148</p> <p>1 So that would suggest to me that they --</p> <p>2 first, you know, you would need to have them</p> <p>3 completing high school or a GED, you know, high</p> <p>4 school equivalent program, and then being able to</p> <p>5 move on to other -- other training that will</p> <p>6 prepare them economically to be independent as</p> <p>7 adults.</p> <p>8 MS. POST: Counsel, to prevent confusion</p> <p>9 it appears about the MODIFY Program, it's on page</p> <p>10 13 of the report if that would be helpful to you.</p> <p>11 It's 5 workers per 2700 children.</p> <p>12 THE WITNESS: Which page did you say</p> <p>13 that was on?</p> <p>14 MS. POST: Thirteen.</p> <p>15 THE WITNESS: Uh-huh. Thank you.</p> <p>16 MS. POST: Anything else I can help</p> <p>17 direct you.</p> <p>18 BY MS. SMITH:</p> <p>19 Q So I had a few more questions about the</p> <p>20 Annie E. Casey Profile.</p> <p>21 Could you turn to page four of that</p> <p>22 document, please.</p>
<p style="text-align: right;">Page 147</p> <p>1 MODIFY being a great idea but poorly implemented</p> <p>2 because of -- it seems like being under resourced</p> <p>3 and putting folks who are the case workers there</p> <p>4 in a very tough position to be able to serve that</p> <p>5 many youth.</p> <p>6 This House Program is another example of</p> <p>7 something that is a wonderful idea, but in</p> <p>8 practice it's not really making, I would think,</p> <p>9 the impacts that West Virginia is hoping that it</p> <p>10 will be making. But again, that is, you know,</p> <p>11 just based on simply the information of -- of how</p> <p>12 many youths are going to college typically, to a</p> <p>13 four-year college.</p> <p>14 Q Do you know how many foster care youth</p> <p>15 from West Virginia are in technical schools?</p> <p>16 A I don't. I do know -- I can tell you</p> <p>17 that only 72 percent of West Virginia foster youth</p> <p>18 have a high school diploma by age 21, so...</p> <p>19 Q And that's from the Casey report?</p> <p>20 MS. POST: Annie E.</p> <p>21 THE WITNESS: Right, Annie E. Casey,</p> <p>22 yeah, Foundation Report.</p>	<p style="text-align: right;">Page 149</p> <p>1 A Yes, I'm there.</p> <p>2 Q Okay. So the top of page four has a</p> <p>3 "Services" title and it shows that West Virginia</p> <p>4 does better than the U.S. population with</p> <p>5 70 percent receiving educational financial</p> <p>6 assistance compared to 23 percent in the United</p> <p>7 States; is that right?</p> <p>8 A Yes.</p> <p>9 Q And then also with room and board</p> <p>10 assistance, West Virginia does better than the</p> <p>11 United States population with 23 percent compared</p> <p>12 with 19 percent nationally; is that right?</p> <p>13 A Yes.</p> <p>14 Q And you didn't cite these statistics in</p> <p>15 your report, right?</p> <p>16 A I don't think that I talked about these</p> <p>17 three.</p> <p>18 Part of it was because there is</p> <p>19 insufficient data for employment programs and</p> <p>20 vocational training. I was mostly looking at the</p> <p>21 outcomes -- using this for the outcomes and then</p> <p>22 kind of talking about the services that were being</p>

<p style="text-align: right;">Page 150</p> <p>1 provided through the information that was -- that</p> <p>2 was given in the -- the state-level reports. So</p> <p>3 yes, there is -- there is this information here.</p> <p>4 And part of what made me pause on this</p> <p>5 is that I couldn't tell if this was at age 21 or</p> <p>6 if this was among transition age youth, for</p> <p>7 example. So part of it was that I wanted to make</p> <p>8 sure I was very clear on everything that I was</p> <p>9 giving you in the report and I'm just not certain</p> <p>10 that this is at age 21 just like the other -- see</p> <p>11 how the other ones are listed very clearly at what</p> <p>12 point that was evaluated? I wasn't sure it was</p> <p>13 like all 14 to 18 year olds in -- in West</p> <p>14 Virginia. I wasn't sure.</p> <p>15 Q Well, the title of the report says,</p> <p>16 Transition-Age Youth in Foster Care," right?</p> <p>17 A It does and then the different</p> <p>18 indicators are pretty clear about which part of</p> <p>19 that group they're talking about. This one just</p> <p>20 says "Services," so I wasn't sure what that was</p> <p>21 about.</p> <p>22 It also says here that it would be less,</p>	<p style="text-align: right;">Page 152</p> <p>1 how to incorporate what this meant like</p> <p>2 specifically for West Virginia, so...</p> <p>3 Q So I'm sorry, I'm confused. Did you</p> <p>4 consider this information or not in making your</p> <p>5 conclusion?</p> <p>6 A I considered --</p> <p>7 Q Did you consider the Educational</p> <p>8 Financial Assistance and the Room and Board</p> <p>9 Assistance? I understand the Employment Programs</p> <p>10 has a small sample.</p> <p>11 A I read this, but I didn't cite it in my</p> <p>12 report because, as I said, I couldn't figure out</p> <p>13 which subgroup they were talking about, if it was</p> <p>14 after youth had aged out or, you know, this was at</p> <p>15 age 21 or if this was 14 or 18 year olds. So I</p> <p>16 considered it while I was reading through the</p> <p>17 document, but I didn't include it in my report</p> <p>18 because, again, I wasn't sure how to -- to frame</p> <p>19 those -- those details.</p> <p>20 Q I have a similar question on page three</p> <p>21 of the Annie E. Casey 2018 West Virginia Profile.</p> <p>22 There's "Placement Type" listed at the</p>
<p style="text-align: right;">Page 151</p> <p>1 so the N/A under "Employment Programs/Vocational</p> <p>2 Training," it says that it cannot publish due to a</p> <p>3 sample size under ten young people. And so that</p> <p>4 suggested to me that we may be talking about a</p> <p>5 very small group of youth. I wasn't confident in</p> <p>6 what exactly they were saying and so that's why I</p> <p>7 didn't cite it there.</p> <p>8 As I stated before, I really tried to</p> <p>9 look for strengths within the West Virginia</p> <p>10 system. I think that's very important to do. And</p> <p>11 it wasn't because I wasn't trying to highlight</p> <p>12 strengths in your services, it just wasn't there.</p> <p>13 Q So was this information considered in</p> <p>14 concluding that there was a pattern of failing to</p> <p>15 serve West Virginia's aging out population?</p> <p>16 A The services that are being provided,</p> <p>17 yes, okay, first, and the services that are being</p> <p>18 provided in West Virginia are not creating the</p> <p>19 kinds of outcomes that we would want to see among</p> <p>20 youth. And so without saying, for example, which</p> <p>21 specific programs were being offered and to how</p> <p>22 many youths, it was hard for me to get a handle on</p>	<p style="text-align: right;">Page 153</p> <p>1 top of the page and it shows that West Virginia</p> <p>2 has a rate of 2 percent of runaways and the United</p> <p>3 States has double that at 4 percent of runaways.</p> <p>4 A Uh-huh.</p> <p>5 Q Why did you not include this in your</p> <p>6 report?</p> <p>7 A So to me runaway is not a placement.</p> <p>8 That is not a formal placement, that is just what</p> <p>9 happens if people leave their placement. So I</p> <p>10 didn't include it for that reason.</p> <p>11 Q Okay. And then could you please turn to</p> <p>12 page two of the report.</p> <p>13 A Yes.</p> <p>14 Q So the top right chart it lists "Number</p> <p>15 of Placements During Most Recent Foster Care</p> <p>16 Episode." So it shows that in 2018, 44 percent of</p> <p>17 West Virginia foster youth experienced one</p> <p>18 placement during their most recent foster care</p> <p>19 episode while only 30 percent of foster youth</p> <p>20 nationally experienced one placement during their</p> <p>21 most recent foster care episode."</p> <p>22 Do you see that?</p>

<p style="text-align: right;">Page 154</p> <p>1 A Uh-huh.</p> <p>2 Q Then it also shows, if you combine those</p> <p>3 first two columns, that in West Virginia</p> <p>4 67 percent of foster youth experienced two or</p> <p>5 fewer placements during their most recent foster</p> <p>6 care episode while only 50 percent of foster youth</p> <p>7 nationally experienced two or fewer placements</p> <p>8 during their most recent foster care episode.</p> <p>9 Why did you decide not to include these</p> <p>10 data points?</p> <p>11 A This is not evidence of anything that's</p> <p>12 going well in West Virginia. This confirms to me</p> <p>13 the congregate care use.</p> <p>14 So when youth are placed in congregate</p> <p>15 care, they are sometimes in a locked or a</p> <p>16 semi-locked facility. That could also explain the</p> <p>17 lower (inaudible) rates that are happening. But</p> <p>18 they are less likely to have a disruptive</p> <p>19 placement because they're in a place that has a</p> <p>20 very high --</p> <p>21 Q I'm sorry, can you explain that?</p> <p>22 A Yeah.</p>	<p style="text-align: right;">Page 156</p> <p>1 BY MS. SMITH:</p> <p>2 Q Okay. So where did you pull out the</p> <p>3 congregate care piece of this?</p> <p>4 A I'm saying that this data is consistent</p> <p>5 with what we would expect with a child welfare</p> <p>6 system that has an overreliance on congregate</p> <p>7 care, that youth would have less transitions and</p> <p>8 numbers of placement if they're in congregate care</p> <p>9 because once you're there, it's harder to run away</p> <p>10 and it's less likely that you're going to have a</p> <p>11 placement disruption because you are already in a</p> <p>12 highly restrictive environment.</p> <p>13 Q Could this also refer to the number of</p> <p>14 placements in a foster family home?</p> <p>15 A It's possible, but again, with the low</p> <p>16 number -- and again Ms. Harper was not able to say</p> <p>17 how many foster parents there are specific to</p> <p>18 this -- to this population, but what we assume is</p> <p>19 a low number based on -- well, it's difficult,</p> <p>20 these are reported across reports, in recruiting</p> <p>21 and retaining and training those foster parents.</p> <p>22 We would expect that -- that these numbers are</p>
<p style="text-align: right;">Page 155</p> <p>1 Q How do you get that from this chart?</p> <p>2 A Yeah. So you can't see it directly from</p> <p>3 the chart of course. What I'm putting that</p> <p>4 information together with is that it simply would</p> <p>5 have confirmed the concerns about congregate care</p> <p>6 because of the low numbers of foster parents</p> <p>7 versus congregate care usage and congregate care</p> <p>8 placements. That to me is in -- is completely</p> <p>9 consistent with what we would see with an overuse</p> <p>10 of congregate care, is that you would have fewer</p> <p>11 placements because once you send youth there, they</p> <p>12 are less likely to have a disruptive placement.</p> <p>13 They're not having to adjust --</p> <p>14 Q So you're saying -- go ahead.</p> <p>15 A They're not having to adjust to a new</p> <p>16 home, they're not having to -- you know, it's</p> <p>17 just -- anyway, I think I've stated my point.</p> <p>18 Q So is it your understanding that this</p> <p>19 number of placements is only referring to</p> <p>20 congregate care placements?</p> <p>21 MS. POST: Objection.</p> <p>22 THE WITNESS: That's not what I said.</p>	<p style="text-align: right;">Page 157</p> <p>1 consistent with -- with -- with a high use of</p> <p>2 congregate care. So did I answer your question?</p> <p>3 Q I think we're getting there. Not quite</p> <p>4 yet.</p> <p>5 I mean, wouldn't this also be consistent</p> <p>6 with use of -- I mean, only placing kids in any</p> <p>7 foster care placement?</p> <p>8 Like I'm not sure how you pulled out</p> <p>9 congregate care when this is number of placements</p> <p>10 during most recent foster care episode and it's</p> <p>11 across all placements.</p> <p>12 MS. POST: Objection.</p> <p>13 Mischaracterization of the testimony. Again, this</p> <p>14 is harassing in terms of counsel deliberately</p> <p>15 misstating testimony where she indicated she</p> <p>16 was -- crossover in terms of analysis of reports</p> <p>17 in comparison and not taking that in isolation.</p> <p>18 THE WITNESS: Think about it this way.</p> <p>19 If a youth comes into care, they're 14 or older</p> <p>20 and if you have a higher percentage of those youth</p> <p>21 who were going into a congregate care versus a</p> <p>22 foster home placement, those -- we would expect</p>

<p style="text-align: right;">Page 158</p> <p>1 that, when a -- when a system has those practices</p> <p>2 of overusing congregate care, that there would be</p> <p>3 lower disruptions of placement. So I'm putting</p> <p>4 together the pieces. That is only -- that</p> <p>5 information is consistent with what we would</p> <p>6 expect to see.</p> <p>7 If you were, for example, having a lot</p> <p>8 of foster homes that were really -- like, let's</p> <p>9 say, you have recruited a lot of foster homes but</p> <p>10 not -- not trained them well and not supported</p> <p>11 them well, then -- and you had reduced your number</p> <p>12 of congregate care placements, you might see</p> <p>13 higher disruptions of placements. That -- that is</p> <p>14 not what's happening in West Virginia though. We</p> <p>15 know that that -- that West Virginia is overusing</p> <p>16 its congregate care facilities.</p> <p>17 BY MS. SMITH:</p> <p>18 Q And what's your basis for that</p> <p>19 statement?</p> <p>20 A That's reported in multiple places. I</p> <p>21 can pull the specific statistic if you need it.</p> <p>22 It's in my report.</p>	<p style="text-align: right;">Page 160</p> <p>1 THE WITNESS: I'm so sorry.</p> <p>2 Let me start again.</p> <p>3 THE REPORTER: Thank you.</p> <p>4 THE WITNESS: So this is on page 18,</p> <p>5 Section VIII. The title of that section is "West</p> <p>6 Virginia Relies Heavily on Congregate Care,</p> <p>7 Despite Evidence of it Being More Expensive and</p> <p>8 More Harmful to Foster Youth."</p> <p>9 "Another major shortcoming in DHHR's</p> <p>10 provision of services to transition age foster</p> <p>11 youth is its heavy reliance on congregate care,</p> <p>12 which places transition age foster youth at</p> <p>13 significant risk of harm. More than half</p> <p>14 (57 percent) of transition age foster youth are</p> <p>15 placed in congregate care in West Virginia</p> <p>16 compared to 34 percent nationally. By comparison,</p> <p>17 approximately one-third (30 percent) of West</p> <p>18 Virginian transition age youth are placed in a</p> <p>19 family-based setting," which includes</p> <p>20 pre-adoptive, relative and non-relative homes,</p> <p>21 "versus approximately half (47 percent) of</p> <p>22 transition age youth nationally."</p>
<p style="text-align: right;">Page 159</p> <p>1 Q Sure.</p> <p>2 A Okay. Give me a minute.</p> <p>3 MS. POST: Just to be helpful, so we</p> <p>4 don't lose time, I believe the whole discussion is</p> <p>5 on page 18 if that will help counsel.</p> <p>6 THE WITNESS: On page 18, the second</p> <p>7 section, "West Virginia" -- well, it's Part VIII.</p> <p>8 "West Virginia Relies Heavily on Congregate Care,</p> <p>9 Despite Evidence of it Being More Expensive and</p> <p>10 More Harmful for Foster Youth."</p> <p>11 "Another major shortcoming" -- I'll give</p> <p>12 you a minute to get there.</p> <p>13 BY MS. SMITH:</p> <p>14 Q I'm there.</p> <p>15 A Thank you. "Another major shortcoming</p> <p>16 in DHHR's provision of services to transition age</p> <p>17 foster youth is its heavy reliance on congregate</p> <p>18 care, which places transition age foster youth at</p> <p>19 significant risk" --</p> <p>20 THE REPORTER: I'm sorry, can you slow</p> <p>21 down when you read because I'm not looking at the</p> <p>22 document.</p>	<p style="text-align: right;">Page 161</p> <p>1 So that's what I mean when I say that</p> <p>2 there is a pattern of overreliance on congregate</p> <p>3 care and why these numbers of lower placement</p> <p>4 disruptions are consistent with that pattern of</p> <p>5 overuse of congregate care.</p> <p>6 BY MS. SMITH:</p> <p>7 Q So do you know what percentage of foster</p> <p>8 youth in congregate care are juvenile justice</p> <p>9 youth mandated to treatment by West Virginia</p> <p>10 Circuit Courts?</p> <p>11 MS. POST: Objection.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MS. SMITH:</p> <p>14 Q And do you have an opinion on whether</p> <p>15 that population experiences the same kind of</p> <p>16 trauma as children in DHHR custody because of</p> <p>17 abuse and neglect?</p> <p>18 MS. POST: Objection. Outside the</p> <p>19 scope, ambiguous.</p> <p>20 THE WITNESS: Can you restate your</p> <p>21 question?</p> <p>22 BY MS. SMITH:</p>

<p style="text-align: right;">Page 170</p> <p>1 asked this question probably 25 different times in 2 different ways and I'm not going to instruct the 3 witness not to answer it, but it's becoming 4 harassing.</p> <p>5 THE WITNESS: Okay. So it would be 6 helpful for me to know not what you stated but 7 actually the percentage of youth who are in 8 congregate care in West Virginia, who are placed 9 in congregate care because they are justice 10 involved and they have been court ordered to be 11 placed there, versus those youth who are foster 12 youth, who are -- come in because of child abuse 13 and neglect, and that is deemed to be the most 14 appropriate placement for them versus youth who 15 are in foster care and only placed in that 16 congregate care setting because there's no other 17 space for them, right? Those are the kinds of 18 things that I was saying would be helpful for me 19 to know. It is not particularly important for me 20 to know the percentage of justice involved versus 21 child welfare, child abuse and neglect involved 22 youth.</p>	<p style="text-align: right;">Page 172</p> <p>1 AFTERNOON SESSION 2 (1:50 p.m.) 3 Whereupon, 4 ELIZABETH M. APARICIO, PH.D. 5 was called for continued examination, and having 6 been previously duly sworn, was examined and 7 testified further as follows: 8 RESUMED EXAMINATION BY COUNSEL FOR 9 DEFENDANTS 10 BY MS. SMITH: 11 Q Okay. Dr. Aparicio, can you please tell 12 me everything you did to get ready for this 13 deposition? 14 A So I prepared for 6 hours and 15 15 minutes. Two hours of that was with ABC and four 16 hours and 15 minutes was on my own. 17 So in that time I read and reread my 18 report and annotated it for what was going to come 19 up in the deposition to try to prepare for your 20 questions today so I would be able to answer them 21 as well as I could. And I reviewed my notes from 22 what I had reviewed in Lexbe as well and -- yeah.</p>
<p style="text-align: right;">Page 171</p> <p>1 Thank you for -- for asking about that 2 and for -- for offering that, but that does not 3 change my conclusion that this system is not doing 4 what it's supposed to be doing to serve transition 5 age youth.</p> <p>6 And it's 12:50. It's time for a break. 7 MS. SMITH: Okay. Thank you. 8 THE WITNESS: You're welcome. 9 MS. SMITH: Can we resume at 1:50? 10 THE WITNESS: Yes. 11 (Whereupon, at 12:51 p.m., a 12 luncheon recess was taken.) 13 * * * * * 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">Page 173</p> <p>1 If there's anything more specific you would like 2 to know, let me know. 3 Q Did you review the complaint in this 4 case to prepare for the deposition? 5 A I had read the complaint some time ago, 6 but I didn't reread it before the deposition, no. 7 Q What about did you read plaintiffs' 8 brief in support of their motion for class 9 certification? 10 A Not as part of preparation for the 11 deposition. I think I may have read that earlier 12 on, I think, but I did not read it in preparation 13 for today. 14 Q Did you review any of the other expert 15 reports that plaintiffs filed with their motion 16 for class certification? 17 A I did not, no. 18 Q And did you speak with anyone else 19 besides plaintiffs' attorneys in preparation for 20 this deposition? 21 A I did not, no. 22 Q Did you do anything else to prepare that</p>

<p style="text-align: right;">Page 178</p> <p>1 statewide information systems?</p> <p>2 A Other than yours, no.</p> <p>3 Q Would you say you were an expert on</p> <p>4 statewide information systems?</p> <p>5 A I'm an expert --</p> <p>6 MS. POST: Objection.</p> <p>7 THE WITNESS: I'm an expert on aging out</p> <p>8 foster youth.</p> <p>9 BY MS. SMITH:</p> <p>10 Q You can answer.</p> <p>11 A Yeah. I'm an expert on aging out foster</p> <p>12 youth, so that means that -- that includes</p> <p>13 tracking youth but not in a statewide system</p> <p>14 specifically.</p> <p>15 BY MS. SMITH:</p> <p>16 Q Okay. So then further down -- let's</p> <p>17 see. The last sentence that begins on page five,</p> <p>18 it again says, "This is evidenced yet again by</p> <p>19 multiple years in which DHHR failed to meet</p> <p>20 federal benchmarks for expectations in these areas</p> <p>21 for care."</p> <p>22 So for that specific piece of that</p>	<p style="text-align: right;">Page 180</p> <p>1 A Those are the case review and planning</p> <p>2 standards that are part of the CFSR review. I can</p> <p>3 detail them and pull that up if you'd like.</p> <p>4 Q No, that's okay.</p> <p>5 Do you have any experience evaluating</p> <p>6 case review and planning standards for foster</p> <p>7 youth aged 14 and older?</p> <p>8 A I would say it's the same part of the</p> <p>9 system of trying to create adequate case records</p> <p>10 and planning standards. So as an individual</p> <p>11 social worker, sure, but not at a system level of</p> <p>12 evaluating how those go. I know what it means to</p> <p>13 put together an appropriate case though.</p> <p>14 Q So would you say that you're an expert</p> <p>15 on a foster care system case review and planning</p> <p>16 standards for foster youth aged 14 and older?</p> <p>17 MS. POST: Objection.</p> <p>18 THE WITNESS: Again, as stated, I'm an</p> <p>19 expert in aging out foster youth and not in this</p> <p>20 factor in particular. So I'm a content expert in</p> <p>21 aging out foster youth, not in specifically and</p> <p>22 only case review and planning standards</p>
<p style="text-align: right;">Page 179</p> <p>1 sentence are you referring to the statewide</p> <p>2 information systemic factor in the 2008 and 2017</p> <p>3 CFSRs?</p> <p>4 A So this sentence is preceded by a</p> <p>5 sentence that has all of the different factors in</p> <p>6 it, so it's more of an omnibus statement that</p> <p>7 there have been multiple years of failure to meet</p> <p>8 federal benchmarks in these different areas.</p> <p>9 So it's not saying specifically only</p> <p>10 statewide systems -- information systems have been</p> <p>11 an issue, but there have been multiple issues that</p> <p>12 have been driving the system's inadequacies.</p> <p>13 Q And are all of those four factors that</p> <p>14 precede that sentence, are those the four systemic</p> <p>15 failures that we went over this morning in the</p> <p>16 2017 CFSR?</p> <p>17 A Yes, that's correct.</p> <p>18 Q So for that kind of the second factor on</p> <p>19 line three of paragraph numbered two, the failure</p> <p>20 to meet case review and planning standards, what</p> <p>21 case review and planning standards are you</p> <p>22 referring to?</p>	<p style="text-align: right;">Page 181</p> <p>1 evaluation. My comments that are drawn based on</p> <p>2 those are based on your own reviews as well as the</p> <p>3 CFSRs.</p> <p>4 BY MS. SMITH:</p> <p>5 Q And by our own reviews, which reviews</p> <p>6 are you referring to?</p> <p>7 A Those are the state-level reviews that</p> <p>8 occurred between CFSRs.</p> <p>9 Q Are you talking about the Program</p> <p>10 Improvement Plan?</p> <p>11 A The Program Improvement Plans come out</p> <p>12 of the CFSRs and then you're reporting on those</p> <p>13 Program Improvement Plans, or PIP, throughout your</p> <p>14 own review to see how you're doing over time.</p> <p>15 So if you look at my appendix, it has</p> <p>16 there the -- it should have the reviews. Yeah,</p> <p>17 I'm looking for the program improvement --</p> <p>18 improvement review so that I can see which one it</p> <p>19 was and what the date was.</p> <p>20 But anyhow, as you know, the state</p> <p>21 evaluates its own progress towards meeting those</p> <p>22 federal benchmarks over time.</p>

<p style="text-align: right;">Page 190</p> <p>1 Q So let's see. We're still on page five.</p> <p>2 The last kind of clause in that sentence that</p> <p>3 we've been looking at refers to DHHR's failure to</p> <p>4 develop adequate foster and adoptive parent</p> <p>5 licensing, recruitment, and retention practices to</p> <p>6 the benefit of older foster youth.</p> <p>7 A Uh-huh.</p> <p>8 Q Do you have any experience with foster</p> <p>9 and adoptive parent licensing practices?</p> <p>10 A So I have experience with supporting</p> <p>11 community-based organizations, not in the</p> <p>12 licensing per se, but in recruiting and retaining</p> <p>13 their foster parents and really supporting them to</p> <p>14 be able to provide adequate services to transition</p> <p>15 age youth. So service more on the community-level</p> <p>16 side of implementation of that, uh-huh.</p> <p>17 Q Okay. The community-level side of</p> <p>18 recruitment and retention but not licensing; is</p> <p>19 that what you said?</p> <p>20 A I'm pausing because I'm thinking back to</p> <p>21 service -- any examples of supporting them with</p> <p>22 licensing.</p>	<p style="text-align: right;">Page 192</p> <p>1 Q So could you please turn to page 20 of</p> <p>2 your report?</p> <p>3 A Yes, I'm there.</p> <p>4 Q Okay. Thank you.</p> <p>5 So the first full sentence on that page</p> <p>6 says, "Substance use has clearly been identified</p> <p>7 as a driver of foster care entry, yet development</p> <p>8 of evidence-based prevention of and treatment for</p> <p>9 substance use among parents does not appear to</p> <p>10 have been a major focus in West Virginia."</p> <p>11 What's the basis for that statement?</p> <p>12 A The basis for that statement is that as</p> <p>13 I say, "It would appear to an outside observer</p> <p>14 that reducing substance use would be a priority in</p> <p>15 order to stabilize foster care entries, yet for</p> <p>16 years this has not been the case" to quote from my</p> <p>17 report.</p> <p>18 If it were me -- if it were my child</p> <p>19 welfare system, I would have been doing everything</p> <p>20 that I could to build those services out and there</p> <p>21 simply is a lack of evidence that that has</p> <p>22 happened.</p>
<p style="text-align: right;">Page 191</p> <p>1 That's correct. Much more in the</p> <p>2 recruitment and retention, training and</p> <p>3 trauma-informed care, that sort of thing.</p> <p>4 Q So would you consider yourself an expert</p> <p>5 in regards to foster and adoptive parent licensing</p> <p>6 practices?</p> <p>7 MS. POST: Objection. Also calls for a</p> <p>8 legal conclusion, what is required by state and</p> <p>9 federal law, and calls -- well.</p> <p>10 THE WITNESS: Well, as I stated earlier,</p> <p>11 I am an expert in aging out youth -- foster youth</p> <p>12 and that may included some licensing and parent</p> <p>13 retention -- recruitment and retention, foster</p> <p>14 parent recruiting and retention, but not</p> <p>15 specifically about licensing and not specifically</p> <p>16 in that area, no.</p> <p>17 BY MS. SMITH:</p> <p>18 Q And what specifically about recruitment</p> <p>19 and retention?</p> <p>20 A I would consider myself an expert in</p> <p>21 that, yes, in the way that I just described to</p> <p>22 you.</p>	<p style="text-align: right;">Page 193</p> <p>1 So as we were talking about before,</p> <p>2 sometimes the evidence is in what's stated and</p> <p>3 sometimes it's in what's absent. And the lack</p> <p>4 of -- lack of discussion about what's being done</p> <p>5 related to substance use and -- and just -- first</p> <p>6 of all, for initial entires but also then for</p> <p>7 transition age youth who then may become parents</p> <p>8 and are stressed and have trauma and then thinking</p> <p>9 about that intergenerational cycle, I -- it was</p> <p>10 surprising and -- to me that that was not the</p> <p>11 number one priority on, for example, the PIPs --</p> <p>12 or, you know, it was just -- it just --</p> <p>13 Q Have you seen responding to substance</p> <p>14 use as a number one priority in other child</p> <p>15 welfare systems that you have familiarity with?</p> <p>16 A So addressing substance use is always a</p> <p>17 priority in child welfare, it's an issue that is a</p> <p>18 struggle. So I -- I would say that yes, most</p> <p>19 child welfare systems are working to address</p> <p>20 substance use in one way or another.</p> <p>21 And, again, with it being such a</p> <p>22 pernicious issue in West Virginia, I was expecting</p>